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**(2016) 02 MAD CK 0046**  
**In the Madras High Court**  
**Case No : W.P. No. 25743 of 2010**

P. Pugalenthir

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 09-02-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 176(1-A), 2(d)  
Penal Code, 1860 (IPC) — Section 302

**Citation :** (2017) 1 LW(CrI) 182 : (2016) 2 MLJ Criminal 220

**Hon'ble Judges :** M. Jaichandren; S. Nagamuthu, JJ.

**Bench :** Division Bench

**Advocate :** M. Radhakrishnan, Advocate, for the Appellant; S. Shanmugavelayutham, Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Nagamuthu, J. - The petitioner is the Director of a registered public Trust known as "Prisoners Rights Forum, Chennai". According to him, the objects of the Trust are to create law awareness among the prisoners and to help them to enforce their human rights, Constitutional rights and the other legal rights. According to him, there appeared a news item in "The Hindu" daily on 10.11.2010, which reads as follows:

"On Monday (November 8), the police took custody of the accused for investigation. On Tuesday morning, the police took both of them from the Saravanampatty police station at 5.30 a.m. for identification of the places where they committed the offence.

They were escorted by Inspectors Kanagasabapathy and Annadurai besides Sub-Inspectors Muthumalai and Jothi.

Manoharan was taken in the first vehicle and Mohanraj in the second vehicle.

When the vehicle was crossing the Vellalore compost yard of the Coimbatore Corporation on the Podanur-Vellalore road, Mohanraj allegedly snatched the

pistol of Sub-Inspector Jothi and placed it at the head of the Head Constable-cum-driver Annadurai and ordered him to drive towards Kerala. When the driver failed to stop, he opened fire in which Jothi sustained an injury in his right arm, while a bullet pierced the stomach of Sub-Inspector Muthumalai.

Immediately, Muthumalai fired two shots in the head of the accused and Inspector Annadurai opened fire at the chest causing his instant death.

City Police Commissioner C. Sylendra Babu said the police opened fire to prevent the accused from killing the police personnel and to foil his attempt to escape from custody."

On going through the said news item, according to the petitioner, he suspected some foul play. But the Commissioner of Police, gave interview to the press that the police opened fire and killed the accused Mr. Mohanakrishnan @ Mohanraj @ Raja with a view to prevent him from killing the police personnel and to foil his attempt to escape from the custody of the police. According to the petitioner, in respect of the killing of Mr. Mohanakrishnan @ Mohanraj @ Raja the police ought to have registered a case under Section 302 I.P.C., investigated the same, resulting in a logical conclusion. In this regard, according to the petitioner, there are even guidelines issued by the National Human Rights Commission on 08.08.2007, wherein, the National Human Rights Commission has stated that whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to that effect must be registered under appropriate Sections of IPC. Such case shall invariably be investigated by State CB-CID. In this regard, the petitioner forwarded a complaint on 09.11.2010, to the respondents 1 to 3 but no case has been registered so far against the police personnel involved in the killing of Mr. Mohanakrishnan @ Mohanraj @ Raja, is his grievance. Therefore, he has come up with this writ petition seeking a direction to the first respondent to register a case under Section 302 I.P.C. against the respondents 5 and 6 who are involved in the killing of Mr. Mohanakrishnan @ Mohanraj @ Raja S/o.Radhakrishnan and to entrust the investigation of the said case to the C.B.I.

2. The 4th respondent/Commissioner of Police, Coimbatore city has filed a detailed counter, wherein, he has stated, inter alia, that on 29.10.2010 at about 10.45 a.m. one Vijay Kumar Jain, a wholesale merchant in Textiles lodged a complaint with the B-8 Variety Hall Road Police Station alleging that his brother's children of tender age viz., Muskan (girl 10 years) and Rithik (boy 7 years) had been kidnapped while on their way to school. On the said complaint, a case was registered on the file of the B-8 Variety Hall Road Police Station in Crime No.1461/2010 under Section 363 IPC and the same was taken up for investigation immediately.

3. During investigation, it came to light that both the children used to go to school in a call taxi in the name and style of "Suriya Call Taxi". The deceased in the present case, Mr. Mohanakrishnan @ Mohanraj @ Raja was a driver in the

said Call Taxi for quite some time and he used to take Muskan and Rithik in the said Call Taxi to the school for quite some time. In such a way, he became well acquainted to the children. Later on, his services were terminated by Suriya Call Taxi and therefore he did not continue to take the children to the school.

4. It is further alleged in the counter that on 29.10.2010 at about 7.50 a.m. which was the usual time for the children to go to school, the deceased Mr. Mohanakrishnan @ Mohanraj @ Raja came in a Maruti Omni Van bearing Reg.No.TN-37-BF-2796, stopped the said van near the residence of the above two children and asked the children to board the Omni Van to go to the school. Believing that Mr. Mohanakrishnan @ Mohanraj @ Raja was taking them to school, both the children got into the van, Mr. Mohanakrishnan @ Mohanraj @ Raja drove the Omni Van along with the children to Pollachi, where he picked up his associate Mr. Manoharan as well. They took the children to an isolated Mango grove at Manjanaikanoor Road in Thuraiyur village in Pollachi Taluk. At that place, both the accused raped Muskan brutally one after the another. After raping the girl they administered poison (Chemical cow dung power mixed with milk) in an endeavour to kill them. Since the attempt failed, they took them to PAP canal at Sarkar Pudur in Pollachi Taluk and pushed them into the canal. The children perished in the running water.

5. In connection with the said case, according to the Commissioner of Police, Mr. Mohanakrishnan @ Mohanraj @ Raja was arrested at 9.45 p.m. on the same day. Some material objects connected to the crime were also recovered on the confession of the accused Mr. Mohanakrishnan @ Mohanraj @ Raja. The case was altered to one under Sections 364(A), 376, 302 and 201 IPC.

6. On 31.10.2010, the other accused Mr.Manoharan was also arrested. Both were taken to the Court for being produced for judicial remand. When they were taken to the CMC hospital, the general public enraged over the above heinous crime allegedly committed by Mr. Mohanakrishnan @ Mohanraj @ Raja and Mr. Manoharan, pelted stones and rotten eggs at them. With great difficulty, the police personnel managed to safeguard them from such attack. Later on, during the course of investigation, the dead bodies were recovered and lot of other incriminating evidences were also collected (we refrain to mention about the details regarding the material objects collected during the investigation of the case as they are not required for the purpose of disposing this writ petition).

7. After having been produced before the Court on 08.11.2010, the learned Judicial Magistrate No.V, Coimbatore ordered the custody of Mr. Mohanakrishnan @ Mohanraj @ Raja as well as Mr. Manoharan to the police. While in custody, they were examined in the presence of witnesses. It is alleged that, in their confession statement, they admitted administering poison to the children. They also disclosed the place where they concealed the bottle in which they mixed chemical cow dung powder with milk. They were kept in B-9 Saravanampatty Police Station during night hours.

8. On 09.11.2010 at 5.00 am they were taken out of the lock up rooms of B-9 Saravanampatty Police Station for further investigation. The investigating officer decided to take the accused to Pollachi for investigation at the early hours to avoid public assembly and outcry, danger to the accused and to have a free and fair investigation keeping in view of the public outcry at CMC Hospital, Coimbatore. The accused were taken in two different vans. Mr. Manoharan was escorted in a van guarded by the investigating officer and his party. Mr. Mohanakrishnan @ Mohanraj @ Raja, was escorted by Mr. Annadurai, Inspector of Police and his party in another van. Both the police parties were taking the accused to Ankalakurichi village for further investigation in respect of the occurrence place. There were also other police constables accompanying them. When both the vans escorted by police were going along the Pollachi Road, the railway gate at Eachanari was found closed. So they took a different route via Saradha Mill Road at Pothanur to Pollachi. The van escorting Manoharan went ahead of the vehicle escorting Mr. Mohanakrishnan @ Mohanraj @ Raja. When the police party escorting Mr. Mohanakrishnan @ Mohanraj @ Raja crossed Pothanur and was going near the Corporation Compost Yard, Mr. Mohanakrishnan @ Mohanraj @ Raja suddenly snatched the revolver from the Sub Inspector of Police Mr.Jothi and threatened the van driver and the escort officer with the revolver. He shouted at them to turn the van towards Palakkad which is his native place, failing which, he would shoot them dead. When the Sub Inspector of Police Mr.Jothi directed Mr. Mohanakrishnan @ Mohanraj @ Raja to drop the gun, Mr. Mohanakrishnan @ Mohanraj @ Raja shouted at the police by saying "You police dogs, I have lost my peace for the past one week, all of you better die" and he fired two rounds with the said revolver and as a result the Sub Inspector of Police Mr.Jothi sustained a bullet injury on his left hand and the Sub Inspector of Police Mr. Muthumalai sustained a bullet injury over the left side of his abdomen.

9. When Mr. Mohanakrishnan @ Mohanraj @ Raja attempted to shoot Mr.Jothi with the revolver once again, the Inspector of Police Mr. Annadurai warned him to drop the revolver. But Mr.Mohanakrishnan @ Mohanraj @ Raja, without heeding to the warning, once again attempted to shoot at Mr.Jothi, at which point, Mr. Annadurai, Inspector of Police apprehended danger to the lives of the police personnel, fired one bullet from his pistol at Mr. Mohanakrishnan @ Mohanraj @ Raja and the Sub Inspector of Police, Mr. Muthumalai fired two bullets with his pistol at Mr. Mohanakrishnan @ Mohanraj @ Raja to disarm him and prevent him from further shooting and causing injuries to the escort party. In the course of this occurrence, Mr. Mohanakrishnan @ Mohanraj @ Raja sustained three bullet injuries and fell down. Inspector of Police Mr. Annadurai snatched the revolver from Mr. Mohanakrishnan @ Mohanraj @ Raja and thereafter the police rushed to the Coimbatore Medical College Hospital, Coimbatore to save the lives of Mr. Mohanakrishnan @ Mohanraj @ Raja and the Sub Inspectors of Police Mr.Jothi and Mr. Muthumalai. The Medical Officer received the injured at about 6.00 a.m and declared Mr. Mohanakrishnan @ Mohanraj @ Raja dead. Mr.Jothi and Mr.

Muthumalai were admitted as inpatients and after initial treatment, they were shifted to the Kovai Medical Centre and Hospitals, Coimbatore.

10. On the complaint lodged by Mr. Annadurai, Inspector of Police, a case was registered in Crime No.1523 of 2010 under Sections 224 r/w 511, 353, 332, 506(ii), 307 IPC and Section 25(B)(1)(a) of the Arms Act r/w Section 176 (1)(A) Cr.P.C. The Assistant Commissioner of Police, Central, Coimbatore City took up the case for investigation.

11. The F.I.R. was forwarded to the Judicial Magistrate Court-VII, Coimbatore for enquiry under Section 176(A) of the Cr.P.C. The learned Magistrate also enquired and submitted a report. The body was forwarded for post-mortem after inquest.

12. The investigation was later on transferred to the CB-CID and the same was under investigation. The Commissioner of Police concluded his counter by stating that the action of the police personnel in resorting to the shooting was only in the exercise of the right of private defence and purely in an endeavour to save the lives of the escorting party. In spite of the violent and murderous acts of Mr. Mohanakrishnan @ Mohanraj @ Raja the police officers acted with utmost restraint in the face of grave danger to their lives. Even though they were injured through his gunshot fire, they warned him and even tried to disarm him. Only upon imminent danger to their lives and to the lives of their subordinates, did they resort to restricted fire on self defence. He would further state that the guidelines of the National Human Rights Commission were not violated. Thus, the Commissioner of Police contended that the writ petition deserves to be dismissed.

13. Mr. Annadurai, Inspector of Police, who was then the Inspector of Police B-2, R.S.Puram Police Station, Coimbatore who was involved in the above occurrence has filed a counter in tune with the counter filed by the Commissioner of Police. Therefore, we do not propose to extract the details of his counter.

14. Mr. Muthumalai, the Sub Inspector of Police who was also involved in the said occurrence has filed a separate counter, in which also he has reiterated what the Commissioner of Police has stated in his counter. Therefore, we do not propose to extract the details of the counter. It is suffice for us to say that the counter filed by Mr. Annadurai and Mr. Muthumalai are in sum and substance similar to the counter filed by the Commissioner of Police, Coimbatore.

15. On the orders of the Honourable The Chief Justice, this writ petition has been listed before this Bench. We have heard the learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondents 1 to 6 and also perused the records carefully.

16. According to the petitioner, since there is an allegation of murder of Mr. Mohanakrishnan @ Mohanraj @ Raja, at the hands of the police personnel and since the same is a cognisable offence, a criminal case for offence under Section 302 I.P.C. should have been registered under Section 154 of Cr.P.C. But,

according to the respondents, in respect of the said occurrence, already a case has been registered in Crime No.1523 of 2010 for various offences and the same was later on transferred to the Deputy Superintendent of Police, Organised Crime Unit, CB-CID, Chennai City. Therefore, according to the learned Public Prosecutor, there need not be yet another case registered in respect of the very same occurrence.

17. The learned counsel for the petitioner would further submit that whether Mr. Annadurai and Mr. Muthumalai had acted in right of private defence and whether they have exceeded the right of private defence or not, are all matters which are to be decided by a Court of law and the investigating police officer cannot conclude that they acted in right of private defence and that they did not exceed the said right.

18. The learned counsel would further submit that Section 105 of the Evidence Act states that it is for the accused to prove their defence that their act falls under any one of the general exceptions as dealt with in the I.P.C. The learned counsel further submitted that, therefore, it is for these two police officers to face the trial for murder and to prove their defence that their act would not amount to an offence of murder as they had acted in exercise of right of private defence falling under Section 100 I.P.C.

19. The learned counsel would further submit that the learned jurisdictional Magistrate, who held enquiry under Section 176 (1)(A) of Cr.P.C., also cannot conclude that it was a clear case of self defence, since he had no power to try the offenders.

20. The learned public prosecutor would vehemently oppose this petition. According to him, the case relating to the said occurrence has been thoroughly investigated by the Deputy Superintendent of Police, Organised Crime Unit, CB-CID, Chennai City and the final report is ready to be filed before the learned jurisdictional Magistrate.

21. The learned public prosecutor would further submit that the learned Magistrate who held enquiry under Section 176(1)(A) has also concluded that these police officers viz., Mr. Annadurai and Mr. Muthumalai had exercised their right of private defence.

22. The learned public prosecutor would further submit that a complaint was made to the State Human Rights Commission and the Commission after holding an enquiry has also concluded that the police officers had acted in right of private defence and there was no violation of human rights.

23. The learned public prosecutor would further submit that at this stage, exercising the writ jurisdiction, this Court may not go into the details of the evidence collected during investigation by the Deputy Superintendent of Police, Organised Crime Unit, CB-CID, Chennai City as the final report is ready to be filed before the learned jurisdictional Magistrate. Thus, according to him,

absolutely there is no merit in this writ petition and therefore the same is liable to be dismissed.

24. We have considered the above submissions.

25. As we have narrated the facts as projected by the rival parties, there is no dispute that Mr. Mohanakrishnan @ Mohanraj @ Raja was in police custody and while in police custody, he was shot dead by two police officers by name Mr. Annadurai and Mr. Muthumalai, who are the respondents 5 and 6 respectively in this writ petition.

26. It is on record that after the occurrence was over, the deceased as well as the two injured police officers were rushed to the Government hospital where the Doctor, after examining the deceased, declared him dead. He found injuries on the two police officers and therefore he admitted them as inpatients. Based on the report of the Inspector of Police concerned, a case has been registered in Crime No.1523 of 2010 under various penal provisions. It is well settled by a catena of judgments of the Hon''ble Supreme Court that FIR is not an encyclopaedia which must disclose all facts and details relating to the offence reported. It is also not necessary for the Station House Officer to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information (vide judgment of the Hon''ble Supreme Court in C.B.I. v. Tapan Kumar Singh reported in (2003) 6 SCC 175). Thus, during the course of investigation, it may turnout that the story as narrated in the information is either false or misleading and the true version is either different or slightly different. On conclusion of the investigation, while filing the final report, the investigating officer would state the true facts of the case which may even be different from the facts stated in the FIR. Any statement which comes into being from any witness subsequent to the registration of the case, would still be a statement only under Section 161 of Cr.P.C. and yet another case cannot be registered under Section 154 of the Cr.P.C. on the said statement. The information setting the law in motion under Section 154 of the Cr.P.C. cannot be equated to a complaint as defined under Section 2(d) of the Cr.P.C. Therefore, in respect of an occurrence, if on the basis of the earliest information, a case has been registered under Section 154 Cr.P.C., in our considered view, as per the settled law, there is no scope to register yet another case in respect of the same occurrence except a counter case.

27. The legality of the registration of two cases in respect of a single occurrence in the nature of a case and counter has been upheld by the Hon''ble Supreme Court in Upkar Singh v. Ved Prakash reported in AIR 2004 SC 4320 followed in Shiv Shankar Singh v. State of Bihar reported in 2012 (1) SCC 130. But, in the instant case, based on the report of the Inspector of Police, already a case has been registered in respect of the shooting down of the deceased and therefore there is no scope to register yet another case on the complaint made by the petitioner subsequent to the registration of the above case. This complaint shall only be treated as a statement falling under Section 161 Cr.P.C. which may only

be useful for investigation of the case.

28. After registration of the above case, rightly the matter was referred to the learned jurisdictional Magistrate who also conducted enquiry under Section 176 (1-A) of the Cr.P.C. Since in the instant case, the death of the deceased occurred while he was in police custody, enquiry under Section 176 (1-A) of the Cr.P.C. was absolutely necessary and also mandatory. In this regard, we may refer to a judgment of this Court (authored by one of us, Justice S. Nagamuthu) in *R. Kasthuri v. State* reported in 2015 1 MLJ(Crl) 455, wherein, it has been held that an enquiry under Section 176 (1-A) of Cr.P.C. is not in substitution of an investigation by the police under Chapter XII of the Cr.P.C. A Division Bench of this Court, (authored by one of us, Justice S.Nagamuthu) in *Esakkiammal v. State by Inspector of Police, CB CID, Tirunelveli* reported in (Reference Case (MD) No.1 of 2015 in Crl.M.P.(SR) No.0009843 of 2015 dated 26.10.2015), while answering a reference made by the learned Principal Sessions Judge, Tirunelveli, has clarified that if a police encounter takes place while the deceased is in police custody, then enquiry by the learned jurisdictional Magistrate under Section 176 (1-A) of the Cr.P.C. is absolutely mandatory. The Division Bench has further clarified that if an encounter takes place, not while the victim was in the custody of the police, then, enquiry has to be held only by the Executive Magistrate under Sub Section (1) of Section 176 of the Cr.P.C. In *People's Union For Civil Liberties (PUCL) and another v. State of Maharashtra and others* reported in (2014) 10 SCC 635, the Hon'ble Supreme Court has issued certain directions as to how a case should be registered in respect of a police encounter and how the investigation should be conducted and by whom and the other relevant matters. This judgment was delivered by the Hon'ble Supreme Court on 23.09.2014. We hastened to add that the said judgment was not prospective in operation. But, in the instant case, even before these directions of the Hon'ble Supreme Court, the procedure stated by way of directions in the said judgment have been followed in the instant case.

29. As we have already pointed out, in respect of the occurrence, a case has been registered and since the death was caused by shooting by two police officers under the control of the Commissioner of Police, Coimbatore, rightly investigation was transferred to a Special Unit known as CB-CID which is considered to be a premier investigation agency in the State and the Deputy Superintendent of Police, CB-CID has done the investigation and it has been reported to this Court that the final report is also ready to be filed before the learned Jurisdictional Magistrate. Thus, in our considered view, we do not find any material to even remotely infer that an attempt has been made to dilute the investigation.

30. The learned counsel for the petitioner would submit that the Commissioner of Police, Coimbatore in the counter filed before this Court has stated that those two police officers had acted in exercise of right of private defence and thus they have not committed any offence. It is the contention of the learned counsel that

such conclusion cannot be arrived at by the investigation officer and it is only for the Court of law to decide whether the assailants had acted in exercise of right of private defence. We find it very difficult to persuade ourselves to accept the said argument. In this regard, we may refer to Section 6 of the I.P.C. which reads as follows:

"6. Definitions in the Code to be understood subject to exceptions - Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though these exceptions are not repeated in such definition, penal provision, or illustration."

31. From this provision, it is crystal clear that the an offence either culpable homicide or murder as defined under Sections 299 and 300 of I.P.C. are also subject to the exceptions contained in Chapter IV titled "General Exceptions". Section 96 of I.P.C. declares that nothing is an offence which is done in the exercise of the right of private defence. Section 100 states as to when the right of private defence of body extends to causing of death. Thus, during the course of investigation, if the police officer finds that the act of the accused falls squarely within the ambit of Section 100 of I.P.C. then, he cannot file a positive final report to the effect that an offence either under Sections 302 or 304 I.P.C. has been committed. For arriving at such a conclusion that the act of the assailants falls squarely within the ambit of Section 100 of the Code, during the course of investigation, the police officer is not concerned with Section 105 of the Evidence Act. Section 105 of the Evidence Act deals with proof of exception during trial. It states that it is for the accused to prove that his act would fall under any one of the general exceptions or special exceptions. Since, during investigation, the accused is not called upon to prove any disputed fact, the question of applying Section 105 of the Evidence Act does not arise at all. The argument of the learned counsel for the petitioner in this regard therefore deserves only to be rejected.

32. It is needless to point out that any conclusion arrived at by the investigating officer that the act of the assailants would fall under any of the general exceptions and therefore the said act would not amount to an offence is not a final adjudication of the issue. If he files any such report before the learned jurisdictional Magistrate, it is for the learned Magistrate to apply his judicial mind into the records and to take a decision either to accept the said negative final report or to order for further investigation or to take cognisance of the offence based on the materials already collected during investigation. Thus, the learned jurisdictional Magistrate has got three options before him and he is not bound by the opinion of the investigating officer. As has been already held by the Hon'ble Supreme Court in *Bhagwat Singh v. Commissioner of Police* reported in 1985 AIR 1285 if the learned Magistrate is of the view that the negative final report needs to be accepted, before taking such a decision, he has to issue a notice to the

defacto complainant and in such an event, he shall be entitled for filing a protest petition and on receipt of the protest petition, how the learned Magistrate has to proceed further has been extensively dealt with in the said judgment. Therefore, we do not want to go further in detail. We quote this judgment only for the purpose of demonstrating the fallacy of the arguments of the learned counsel for the petitioner that the police officer investigating the case cannot conclude that the act of the assailants falls under any one of the general exceptions dealt with in Chapter IV of I.P.C. We wish to reiterate that the investigating officer has the power to conclude that the act of the assailants falls under any one of the general exceptions contemplated in Chapter IV of I.P.C. or any other exceptions appended to the particular penal provision and file the final report accordingly.

33. In the instant case, it has been reported that the Deputy Superintendent of Police, CB-BID has already completed the investigation and the report is also ready to be filed before the learned Jurisdictional Magistrate. We do not want to express any opinion regarding the sufficiency or correctness of the investigation done by him, as expressing any opinion may influence the mind of the learned Magistrate before whom the final report is going to be filed. We clarify that the Deputy Superintendent of Police, CB-CID is at liberty to file the final report in the case before the learned jurisdictional Magistrate and it is for the learned jurisdictional Magistrate to deal with the same in accordance with law. Thus, as of now, we do not find any merit at all in this writ petition.

34. In the result, the writ petition fails and the same is accordingly dismissed. No costs.